



Yellowstone County Zoning Commission Minutes for the Meeting of Monday March 14, 2005

The County Zoning Commission met on Monday March 14, 2005 in the large conference room on the 4th floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:01 p.m.

Commissioners and Staff		1/10/05	2/14/05	3/14/05	4/11/05	7/11/05	8/8/05	9/12/05	10/10/05	11/14/05	12/12/05
Oscar Heinrich	Chairman	CANCELLED	1	1							
Jerome Musselman	Vice-Chair		1	1							
Al Littler	Commissioner		1	1							
Joan Hurdle	Commissioner		1	1							
Dennis Cook	Commissioner		1	1							
Nicole Cromwell	Planner II/ Zoning Coordinator		1	1							
Wyeth Friday,	Planner I		1	-							
Elizabeth Allen	Planning Clerk		1	1							

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator
Elizabeth Allen, Planning Clerk

ANNOUNCEMENTS:

There were none.

PUBLIC COMMENT

Chairman Heinrich asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public may be heard on any subject that is not on the agenda, and that the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

There were none.

Approval of Minutes:

On a motion by Chairman Heinrich, and passed by a 5-0 voice vote, the minutes of February 14, 2005, were approved with no changes.

Public Hearings:

Chairman Heinrich reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of March 22, 2005.

On a motion by Commissioner Cook, seconded by Commissioner Hurdle, and passed by a 5-0 voice vote, Zone Change #577 was removed from the table.

Return Item: Zone Change #577

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of denial. She explained the reasons for the staff decision.

3080 Wise Lane, a zone change request on the front 2.5 acres of 10 acre parcel, from Agriculture Open Space to Community Commercial, Tract 3 of C/S 3201, Tax ID D11762. Applicant is Art Staudt and Dan Wyrwas is the agent.

REQUEST

This is a zone change request from Agricultural Open Space to Community Commercial on a portion of unplatted land on 2.5 acres of the 10 acre Tract 3 of Certificate of Survey 3201. The property is located at 3030 Wise Lane. The Planning staff is forwarding a recommendation of denial for this application.

APPLICATION DATA

OWNER:	Art Staudt
APPLICANT:	Danny Wyrwas
LEGAL DESCRIPTION:	2.5 acres of the 10 acre Tract 3 of Certificate of Survey 3201
ADDRESS:	3030 Wise Lane
CURRENT ZONING:	Agricultural Open Space
PROPOSED ZONING:	Community Commercial
EXISTING LAND USE:	A 5,000-square-foot shop occupied by a fence fabrication business
SIZE OF PARCEL:	2.5 acres to be re-zoned, 7.5 acres to remain Ag Open Space

APPLICABLE ZONING HISTORY

This property's violation of the allowed uses under the zoning regulations has been the subject of correspondence from the County Code Enforcement Office since 1999 and the subject of complaints filed with the County Code Enforcement Office in 2001 and 2004. The timeline of correspondence is as follows:

January 11, 1999: Property Owner Art Staudt was sent a letter by the County Code Enforcement Office clarifying the allowed uses of his property in relation to a 5,000-square-foot building he was constructing on the site. At that time, Mr. Staudt appeared to be considering the use of the building to store dog and cat food for distribution. He was informed that this was not an allowed use in the Agricultural Open Zoning District.

February 7, 2001: Property Owner Art Staudt was sent a letter by the County Code Enforcement Office informing him that it had received complaints regarding the use of a building at 3030 Wise Lane for the operation of a pet food distribution business. A business at that address was listed in the Yellow Pages as Doc's Distributing – Diamond Pet Food. Mr. Staudt was informed that he was in violation of the Unified Zoning Code Section 27-305-Allowed Uses. He was directed to apply for a zone change for the property by March 5, 2001.

April 14, 2004: Property Owner Art Staudt was sent a letter by the County Code Enforcement Office informing him that it had received complaints regarding the use of a building at 3030 Wise Lane for the operation of a vinyl siding and fence business. A business at that address was listed in the local phone book as Absolute Vinyl. Mr. Staudt was informed that he was in violation of the Unified Zoning Code Section 27-305-Allowed Uses. He was directed to cease the business operation or apply for a zone change for the property by May 3, 2004.

June 10, 2004: Property Owner Art Staudt was sent a letter by the County Code Enforcement Office following up on the April 14, 2004 notice regarding the illegal use of his property for a vinyl fabrication business. A re-inspection of the property on June 9, 2004 had revealed that the business was still in operation at 3030 Wise Lane. Mr. Staudt was given until July 6, 2004 to cease the business operation or apply for a zone change.

October 14, 2004: Property Owner Art Staudt was sent a letter by the County Code Enforcement Office following up on the June 10, 2004 letter and instructing him to immediately cease the business operation or apply for a zone change or the case would be forwarded to the County Attorney for prosecution.

December 15, 2004: Absolute Vinyl owner Danny Wyrwas, who was leasing the property from owner Art Staudt, submitted a zone change application to the Planning and Community Services Department for a zone change on a portion of the subject property from Agricultural Open Space to Community Commercial zoning.

Discussion:

Commissioner Hurdle questioned who owned what parts of the ten acres and if others lived on it.

Ms. Cromwell stated that Mr. Wyrwas owned the whole ten acres and at this time there is no residential use of the land. She stated that there are sanitary restrictions that apply to the parcel and those would have to be lifted before any the land could be used for residential. She stated

that regardless of the outcome of this zone change the restrictions would have to be lifted before the property could be used for Residential uses. **Ms. Cromwell** also stated that the Ag restriction that had once been believed to apply to this property did not. **Ms. Cromwell** explained the restriction and she showed on the map where the Ag restrictions did apply. She explained the purpose of the Ag Restriction.

Commissioner Hurdle asked why the restriction was on the property.

Chairman Heinrich explained why the property owner would do that.

Chairman Heinrich explained that because the public hearing had already been closed so there could be no public comment. **Chairman Heinrich** asked of the board had any questions for the applicant or any of the public present.

Commissioner Littler asked whether the applicant wanted to withdraw his application for a zone change.

Chairman Heinrich asked Mr. Wyrwas what his intentions for the property where.

Mr. Wyrwas stated that he would like to withdraw the application at this time.

Chairman Heinrich clarified that the applicant would like to withdraw Zone Change # 577.

Mr. Wyrwas stated that that was correct.

Commissioner Hurdle stated that she felt the Board should encourage the applicant to apply for PUD and wanted to know what steps the Board could take to help the applicant in that process.

Chairman Heinrich asked the applicant what his intentions for the property are.

Mr. Wyrwas said that Mr. Brosivich could better explain his intentions.

Mr. Brosivich said that they would like to change this to PUD and they need some more time to speak with the property owner and get the whole thing figured out. However, they need more time to get this clarified with the current property owner.

Commissioner Hurdle said she thought that PUD would be good for that area and that this would be a good use for this property.

Commissioner Musselman arrived at 4:19 pm.

Chairman Heinrich asked whether the others involved are happy with the process that is going on and questioned what concerns the others might have.

Mr. Hicky said that they now had some room to work and as long as the process keeps moving. He stated that while he was not particularly please with what is going on, all the parties involved have been helpful and upfront about the entire process. He stated that he will continue the process although he is still not thrilled about commercial development in this neighborhood. He stated that his concern is land use and he is willing to continue with the process to see if it will work or not.

Mr. Workman said he thought that Mr. Hicky would benefit down the road if Mr. Wyrwas is approved for this PUD because that would put him in the drivers seat in relation to his own ability to find uses for his land. He stated that he feels that this is a win-win situation.

Commissioner Littler asked whether the application fee was lost or if the fee paid for this zone change would be transferable.

Ms. Cromwell explained that the Department director with the approval of the BOCC can waive the application fee. If this is a subsequent application, depending on how long between now and when the application for PUD is submitted, it may be waived, however he must submit that request formally in writing.

Chairman Heinrich said that he would like the fee that has been paid to be applied towards the cost of the application fee for the PUD.

Commissioner Hurdle asked if the Board could recommend that course of action the BOCC.

Chairman Heinrich stated that that is something they would cover later under other business.

Ms. Cromwell re-clarified everything for Commissioner Musselman.

Commissioner Littler asked about sanitary restriction on the property.

Ms. Cromwell said that the state and county would have to be involved on to lift the sanitary restrictions.

Commissioner Littler asked if the uses are restricted in PUD and whether they could set restriction and if there is a lot of flexibility.

Chairman Heinrich stated that there is also a time limit to how long a business can stay on a PUD, so they always have the ability to change things.

Ms. Cromwell said yes, it is like its own zoning district.

Motion:

On a motion by Commissioner Hurdle, seconded by Commissioner Musselman and passed by a 5-0 voice vote, the Board accepted the withdrawal of Zone Change #577.

Item #1 Zone Change #578

Ms Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning surrounding the subject property. She said staff is forwarding a recommendation of approval. She explained the reasons for the staff decision.

3048 Highway 312 East, Christian MacKay owner. A zone change on Tract 5 of C/S 1442 – 16.59 acres from Ag-Open to Ag-Suburban. Tax ID D05014.

REQUEST

This is a zone change request from Agricultural Open Space to Agricultural Suburban on the 16.95-acre Tract 5 of Certificate of Survey 1442. The property is located at 3048 Highway 312 just northeast of the Billings Heights. The Planning staff is forwarding a recommendation of approval for this application.

APPLICATION DATA

OWNER:	Christian Mackay
APPLICANT:	Christian Mackay
LEGAL DESCRIPTION:	Tract 5 of Certificate of Survey 1442
ADDRESS:	3048 Highway 312
CURRENT ZONING:	Agricultural Open Space

PROPOSED ZONING: Agricultural Suburban
EXISTING LAND USE: **Single-family residential**
SIZE OF PARCEL: 16.95 acres

APPLICABLE ZONING HISTORY

January 26, 1999: A zone change request from Agricultural Open Space to Agricultural Suburban was approved on tracts 2 and 3 of Certificate of Survey 1442 directly east of the subject property. These two tracts are now the White Tail Subdivision off of Bitterroot Drive.

May 30, 2000: A zone change request from Agricultural Open Space to Agricultural Suburban was approved on Tract 4 of Certificate of Survey 1442 northeast of the subject property at the southeast corner of Highway 312 and Dover Road. Tract 4 has since been divided into Tract 4A and Tract 4B.

Discussion:

The board discussed the parcel of land and where the different features lay.

Commissioner Littler asked if there are any public services available to these land areas, such as natural gas.

Ms. Cromwell responded that there is Heights Water available north of Highway 312.

Commissioner Littler asked if all the area south of Highway 312 is on wells.

Ms. Cromwell responded yes, wells or cisterns.

Commissioner Hurdle asked if there are some people using cisterns in this area.

Ms. Cromwell stated yes, because some of the ground water in this area is not suitable.

Commissioner Hurdle stated that she was concerned about sanitation since this is not an area that the City Council will be annexing until the year 2011. She stated her concern that because there has already been one subdivision allowed that we feel a rush to put in another.

Ms. Cromwell stated that the Ag-suburban zone is not a predecessor to the R-9600 zone, it is a low density zone. If this area were annexed this would turn into R-9600 and this would be consistent with this zoning, the only non-conforming uses would be zone agriculture. The owner would have to go through the same steps as anyone to create a subdivision, including waste water management to secure the quality of the ground water.

Commissioner Hurdle questioned why the ground water is so degraded that some properties already have to use cisterns.

Ms. Cromwell stated that this is because of past agricultural uses and the sand and gravel pit in the area which has an effect on ground water.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #578.

The public hearing was opened at 4:37 p.m.

Applicant:

Christian McCay, 3048 Highway 312, stated that Ms. Cromwell did a great job framing the issues of this application. He stated that they would like to either subdivide the property in a small subdivision or market the property and that they were unable to do this because of Ag-Open allows only 10 acre parcels. He feels that this would fit in with the development would fit in nicely with current developments, including the current Whitetail subdivision and the single home adjacent to his property. He stated that he would be happy to answer any questions.

Commissioner Cook asked how the crick runs through the property and what it is exactly.

Mr. McCay showed the crick and explained where the springs are and how they flow.

Commissioner Cook asked if that is a live crick year round.

Mr. McCay stated that it is.

Commissioner Hurdle asked how they are planning to develop the area and how they would deal with the creek.

Mr. McCay showed on the overhead map and what they were planning to do with the property.

Commissioner Hurdle asked what the water quality of the crick was.

Mr. McCay stated that he had not tested the water quality of it; he stated that he used the water primarily for horses. He showed where the crick began.

Rende McCay, 3048 Highway 312, stated that they are looking at a max of six homes on this property, with about two or three acres per home.

Commissioner Hurdle asked whether they would be depending on wells or cisterns for water.

Mr. McCay said stated that currently use a well on his property, although it is not deep it works fine for them. He stated that his property has two homes on it and they use the one well for both houses and live stock and they have never had a water shortage.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #578.

Opponents:

Less Oedekoven, 1414 Independent, stated that he was not opposed he just wanted to learn something about this property. He stated that he had heard that they would be placing 16 houses on the property and he didn't think that that would work but 6 houses would be fine with him.

Chairman Heinrich stated that this commission could only look at the Zone Change and not the planned use. He stated that Mr. Oedekoven should keep in touch with staff.

The public hearing was closed at 4:47 p.m.

Discussion:

Commissioner Hurdle asked if the property was subdivided where the children would go to school.

Mr. McCay stated that they are part of the independent school system.

Commissioner Littler asked if they were to do a minor plat would they be allowed to do 5 lots and a remainder.

Ms. Cromwell said yes.

Motion:

On a motion Commissioner Littler, seconded by Commissioner Cook, and passed by 5-0 voice vote, a recommendation of approval of Zone Change #578 will be forwarded to the BOCC at their meeting of March 22, 2005.

The Public portion of the meeting ended at 4:49.

Other Business:

On a motion by Commissioner Littler, seconded by Commissioner Musselman, and passed by a 5-0 voice vote, recommending that the commission should apply the \$900.00 fee paid for the zone change #577 to the application for PUD for that property if a new application is made within 90 days.

The board also authorized Chairman Heinrich to speak to the BOCC in relation to this matter.

Adjournment:

The meeting was adjourned at 4:52 p.m.

Oscar Heinrich, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk